September 20, 2005

The Honorable
Representative George Eichhorn
Iowa State Capitol Building
Des Moines, IA 50319

Dear Representative Eichhorn,

The Iowa Osteopathic Medical Association (IOMA) wishes to thank you for the opportunity to address the impact of House Study Bill 302 entitled, Starvation and Dehydration of Persons with Disabilities.

We would first like to say that the osteopathic physician members of IOMA are not in favor of House Study Bill 302 as it intrudes into the lives of our patients and their right to privacy and injects the state into the physician/patient relationship.

Our specific objections to this legislation are based on the following concerns:

Section 3 (216F.3), (3)b. Should previous versions or other "non-official" documents executed by the person also be included if the intent is clear?

Section 3 (216F.3), (3)c. This exception to a presumption that the person wanted nutrition and hydration is hard to prove. Perhaps there should be a provision giving weight to the opinions of those close to the person.

The terms "clear and convincing evidence" and "gave express and informed consent" have rather nebulous connotations. The definitions given in Section 2 (216F.2)1 state that the person who is now dying must have known about medical procedures, treatments, alternatives, and risks with treatments. This is a little much to expect. No patient is able to research all the possible ways they could die and then keep up with the research. This could be open for interpretation or in the future re-interpretation by someone promoting their own agenda.

How is this "evidence" going to be proved? In some instances statements made during the person's lifetime are remembered by others. Who will be allowed to remember?

Section 4 (216F.4). This does not specifically limit the court action to cases where no living will/POA for health care was executed by the person when legally competent. It should, otherwise any of the listed entities could bring a court action even though the patient had made their wishes known in a living will or through designating a POA.

Section 4 (216F.4) (2)a. If we read this correctly, a sibling could sue to overturn the decision of a spouse should they disagree with the patient's spouse. We think language should be written in here to protect the right of the spouse to make these decisions. Perhaps it could give the right to make the decision to the spouse, if he/she is mentally capable and the right has not been given to someone else.

Section 4 (216F.4) (2)b. Why should a former health care provider have the right to bring an action? He or she is not involved with the person.

Section 5 (216F.5) states it does not invalidate living wills, durable power of attorney, etc. that were executed prior to July 1, 2005. Logic implies that it invalidates those done after July 1, 2005. A duly executed living will or DPOA should always prevail regardless of the date it is executed.

Also there is no mention of perenteral, (intravenous) nutrition or of withdrawal of nutrition and hydration once started. Nothing in the bill addresses what should be done if it is determined that the patient has died. May feeding be discontinued even if a court order is in place? This bill also does not define hydration (oral or IV).

As you can see this legislation leaves a lot of unanswered questions as currently drafted.

We believe that this issue is one that should be left to the patient and physician. We all watched with horror the legal and ethical questions that arose from the Terri Schivo case. We agree that efforts should be made to help patients avoid being placed in a similar situation. We believe patient and public education are a better way to ensure that the patient's true wishes are carried out.

Thank you for the opportunity to present our questions, concerns and opinions.

Sincerely,

Leah J. McWilliams, CAE
Executive Director